

In the Matter of Kim R. Myers, Department of Human Services
Sick Leave Injury Appeal
DOP Docket No. 2005-3189
(Merit System Board, decided December 21, 2005)

Kim R. Myers, a Supervisor, Personnel Records and Payroll Processing 2 with the Vineland Developmental Center, Department of Human Services, appeals the denial of sick leave injury (SLI) benefits.

By way of background, the appellant completed an Employee's First Report of Accidental Injury or Occupational Disease on February 14, 2005, alleging that, on October 21, 2004, she was exposed to chickenpox when she came in close contact with another employee who previously had been diagnosed with the disease. Specifically, the appellant stated that an outbreak of chickenpox occurred at Reeves Cottage, Vineland Developmental Center, on October 3, 2004. The cottage was quarantined and 27 employees who worked in the cottage were tested for exposure to the varicella virus that causes chickenpox. At least 16 of those employees tested positive and three of them were diagnosed with chickenpox, including Mary Green. Green developed symptoms on October 10, 2004, and was diagnosed by her personal physician with chickenpox. She was ordered by her supervisor to remain out of work until October 25, 2004. However, on October 15, 2004, Green stated that she was advised by her physician that she was no longer contagious due to her lesions having "crusted over," so she picked up her paycheck at the appellant's workplace on October 21, 2004. The appellant stated that she developed symptoms on or before November 23, 2004, and was diagnosed with chickenpox by Dr. Olga Kaczaj, her personal physician. The record contains Dr. Kaczaj's note that states the appellant developed a rash on November 23, 2004 and was possibly exposed to the varicella virus 14 to 20 days prior to the rash's appearance, around 10 days after her contact with Green.

As a result, the appointing authority denied the appellant's request for SLI benefits from November 27 through December 10, 2004 on the basis that she failed to establish that her illness was work related. *See N.J.A.C. 4A:6-1.6(c)3.*

On appeal to the Merit System Board (Board), the appellant argued that there was no other way that she could have been exposed to chickenpox other than at work. In response, the appointing authority maintained that the appellant was denied SLI because it was highly unlikely that the appellant contracted the varicella virus five weeks after being exposed to Green. In the attached decision rendered on August 10, 2005, the Board concluded that there was conflicting medical documentation in the record and

referred the matter to the Medical Examiners Panel (Panel) for a determination as to whether the appellant's illness was work related.

The Panel provided the parties an opportunity to be heard on November 9, 2005, and issued the attached report and recommendation on November 15, 2005. Neither the appellant nor a representative of the appointing authority was present at the meeting. No exceptions were filed.

N.J.A.C. 4A:4-6.5 provides, among other things, that the Board may utilize the expertise of a Medical Examiners Panel as appropriate to make a report and recommendation on medical issues. The Panel is composed of medical professionals, all of whom are faculty and practitioners of the New Jersey Medical School (University of Medicine and Dentistry of New Jersey).

In this case, the Panel's Chairman, Lawrence D. Budnick, MD, MPH, Director of Occupational Medicine Service and Associate Professor of Clinical Medicine, New Jersey Medical School (University of Medicine and Dentistry of New Jersey), requested that a medical specialist in contagious diseases perform a chart review and make findings and recommendations regarding the appellant's entitlement to SLI benefits.

The report by the Panel discussed all submitted medical evaluations of the appellant. The Panel concluded with a reasonable degree of medical certainty that the appellant's chickenpox was related to an exposure to the varicella virus at her work during October 2005. In this regard, it stated, "Most varicella outbreaks in closed settings do not result in only one propagation of virus, since varicella virus is very contagious."

CONCLUSION

According to uniform SLI regulations, in order to be compensable, an injury or illness resulting in disability must be work related and the burden of proof to establish entitlement to SLI benefits by a preponderance of the evidence rests with the appellant. See *N.J.A.C.* 4A:6-1.6(c) and *N.J.A.C.* 4A:6-1.7(h).

In the instant matter, the appointing authority denied the appellant's claim for SLI benefits on the basis that the appellant had failed to establish that her illness was work related. However, the Board found that there were significant questions of cause and effect that required further review by those with medical expertise in the transmission and containment of infectious diseases. Although the appointing authority contended that it was highly unlikely that the appellant could have contracted varicella without being in close proximity to the quarantined cottage, the Board noted that the appellant was in close contact with at least one infected employee.

Having considered the record and the Panel's report and recommendation issued thereon and having made an independent evaluation of same, the Board accepts and adopts the findings and conclusions as contained in the attached Panel's report and recommendation. Accordingly, under these particular circumstances, the appellant has satisfied her burden of proof in this matter and the granting of SLI benefits from November 27 through December 10, 2004 is proper and consistent with uniform SLI criteria.

ORDER

Therefore, it is ordered that this appeal be granted.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.